UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,082	02/02/2004	Tsutomu Tsukagoshi	Y2238.0056	6555

32172   7590   12/01/2008
DICKSTEIN SHAPIRO LLP
1177 AVENUE OF THE AMERICAS (6TH AVENUE)
NEW YORK, NY 10036-2714

EXAMINER
BARON, HENRY

ART UNIT	PAPER NUMBER
2416	

MAIL DATE	DELIVERY MODE
12/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*10/768,082*	TSUKAGOSHI ET AL.
	Examiner	**Art Unit**	
	HENRY BARON	2416	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>03 November 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

  a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

  b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

  (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

  (b) ☐ They raise the issue of new matter (see NOTE below);

  (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

  (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

  The status of the claim(s) is (or will be) as follows:

  Claim(s) allowed: _____.

  Claim(s) objected to: _____.

  Claim(s) rejected: *1-24*.

  Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /Seema S. Rao/
  Supervisory Patent Examiner, Art Unit 2416

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the Office Action does not provide a citation to La Porta that teaches resource management is maintained in "the user data processing means," as recited in independent claims 1, 9 and 17 an is silent as to where resource management functions for data encapsulation and decapsulation are performed. La Porta describes "a distributed, server based communications network architecture in which various traditional call processing functions, such as switching fabric or channel control, call control, connection control are separated into distinct application processes with clearly defined interfaces for communications between these application processes." La Porta generally states that application processes, such as call control, connection control and channel control, may be implemented in separate physical or logically partitioned nodes - i.e., in a distributed architecture. The mere fact that the application functions can be separated does not teach "resource management means being provided in the user data processing means," or "by the user data processing means" as required by the independent claims. More importantly, In Fig. 5, La Porta shows that call control and connection control functions are managed by centralized call control servers 502 and connection servers 504, respectively. Those servers are not provided in the processing means that supplies processing resources for the call. The only function disclosed in La Porta that distributes management along with processing is the channel control function, as shown by channel control servers 506 and 511. But these processing resources merely set up VPI/VCI channels, and are not the claimed user data processing means where "user data is encapsulated and decapsulated."
Examiner replies that Applicant's admitted prior art (AAPA) provides the basis systems where a generic resource management system provides central resource management in response to user requests, but is lacking in disclosing of a decentralized resource management means being provided in the user data processing means. The architecture taught by LaPorta uses a generic resource management means provided in the user data processing means. In LaPorta various traditional call processing functions, such as switching fabric or channel control, call control, and connection control i.e. resource management means are separated into distinct application processes (sic resource management means) with clearly defined interfaces for communications between these application processes. Those distinct application processes may be implemented in separate physical or logically partitioned nodes i.e. user data processing. In other words, LaPorta teaches of a de-centralized resource management means or application processes in, among other things, physically partitioned node. Examiner notes that though connection control and call control functions are not user data processing functions, these features fall under the generic rubric of resource management means. In response to Applicant's argument that management of VPI and VCIs resources are on a link-by-link basis, and as such, must be strictly managed, Examiner notes that claim 1, or any other dependent claims, do not specify the level of resource management means, e.g. strict, loose, etc..